



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Daniels Manufacturing Corp.
File: B-223475.2
Date: January 13, 1987

DIGEST

1. Protest of agency's cancellation of two line items under an invitation for bids and resolicitation of the requirement is denied where the single responsive bid on each canceled item was significantly higher than the other nonresponsive bids submitted under both line items and 133 percent and 85 percent higher than prices paid for the two items under recent contracts.
2. Resolicitation of canceled items does not create an impermissible auction where the items were not awarded because of unreasonable prices.

DECISION

Daniels Manufacturing Corp. protests the decision of the General Services Administration (GSA) not to award contracts for items 28 and 29 under invitation for bids (IFB) No. FCEN-FM-A6211-S-7-16 and to cancel the solicitation with respect to those items, because Daniels' bid, the only responsive one for those items, was unreasonably priced. Daniels also argues that the agency's decision to cancel those items and resolicit the requirement unfairly exposes its bid prices and thus creates an impermissible auction. We deny the protest.

The solicitation sought bids to fill GSA's requirements for 61 types of hand tools for installing and removing electrical contacts and required the submission of bid samples. Daniel first protested to this Office on June 25, 1986, that the solicitation did not allow sufficient time for preparation of bid samples and asked that GSA extend the bid opening date 9 days. Daniels later withdrew that protest when it was able to prepare and timely submit bid samples.

Bids were opened as scheduled on July 30. The bids on items 28 and 29 were as follows:

	<u>#28</u>	<u>#29</u>
Daniels	\$15.72	\$19.95
Contact Service Tool	10.66	11.88
Jerico Precision Mfg.	3.85	-
Spec. Con. Mfg.	12.00	12.00

On both of these items Daniels' was the only responsive bid because the other bidders either failed to submit bid samples or submitted samples late.

The contracting officer declined to award items 28 and 29 to Daniels because she concluded that its prices for those items were unreasonably high. Thus, in accordance with Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1 (c)(6) (1985), all bids were rejected and the solicitation was canceled with respect to items 28 and 29 since the only acceptable bid on those items was unreasonably priced. These requirements were resolicited through request for proposals No. FCEN-FM-A6211N-11-6-86, which included other items as well. It set November 6 as the date for receipt of initial proposals.

Daniels contends that it should be awarded items 28 and 29 since it submitted the low responsive bid on those items. The protester argues that it incurred extra cost to meet the deadline for bid samples and that GSA's proposed resolicitation is tantamount to extending the original time for submission of samples and would create an auction since its prices have been exposed. Daniels also argues that its prices on the items in question were not unreasonable, as GSA contends, since, with respect to item 28 for instance, its bid of \$15.72 was not out of line compared to other bids of \$10.66 and \$12.00.

GSA maintains that Daniels' prices on items 28 and 29 were clearly unreasonable.

With respect to item 28, GSA notes that Daniels' bid was 308.3 percent, 47.5 percent and 31 percent higher than the first, second, and third low bids, respectively, and that according to GSA, the previous requirements contract for this item, which expired on October 31, was awarded at a price of \$6.74, so that Daniels' bid represents an increase of 133 percent over that contract.

With respect to item 29, Daniels' bid of \$19.95 is 68 percent and 66 percent higher than the first and second low bids, respectively, and 85 percent higher than the \$10.78 per item price of the previous requirements contract that expired on October 31. GSA argues that recent market conditions do not justify that price increase on either line item since the Producer Price Index^{1/} (PPI) for hand tools shows a price increase of only 2.3 percent from July 1985 until July 1986.

Generally, cancellation of a sealed bid solicitation after bid opening is improper absent a compelling reason. FAR, 48 C.F.R. § 14.404-1(a)(1). Nevertheless, a solicitation may be canceled after bid opening if the prices of all otherwise acceptable bids are unreasonable. 48 C.F.R. § 14.404-1(c)(6). Such a determination of unreasonableness involves discretion on the part of the contracting officer but must have a reasonable basis. See Mid South Industries, Inc., B-216281, Feb. 11, 1985, 85-1 CPD ¶ 175. A determination of price reasonableness properly may be based upon comparisons with such things as government estimates, past procurement history, current market conditions, or any other relevant factors, including any which have been revealed in the bidding. Sylvan Service Corp., B-222482, July 22, 1986, 86-2 CPD ¶ 89.

Here, the contracting officer compared Daniels' prices to other bids on the same items that were rejected as nonresponsive because they lacked bid samples; to prices paid for the tools in recent procurements; and to the PPI for hand tools. In each of these comparisons, Daniels' prices were considered to be unreasonably high.

Daniels, however, argues that it incurred expenses beyond those of the other nonresponsive bidders because it prepared and timely submitted the required bid samples while no other bidder met this requirement. While, in general, it may not be good practice to base a determination of price unreasonableness only on a comparison with nonresponsive bids, particularly where the nonresponsiveness may have affected the bid price, MIL-STD Corp., B-212038, et al., Jan. 24, 1984, 84-1 CPD ¶ 112, here GSA notes that two bidders on

^{1/} The Producer Price Index, prepared by the Bureau of Labor Statistics (BLS), measures average changes in prices received by domestic producers of commodities. See the BLS Publication "Producer Prices and Prices Indexes."

item 28 and one bidder on item 29 had bid samples available but simply failed to timely submit them. Thus, we think that GSA's belief that these bidders could have timely submitted bid samples without raising their prices is reasonable.

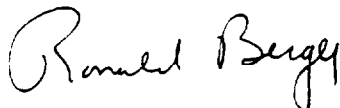
Nevertheless, it is not necessary to determine whether GSA's comparison of Daniels' bid prices with the nonresponsive bids was alone a sufficient basis for determining price unreasonableness since GSA also compared Daniels' prices to prices paid for the items in recent procurements and to the PPI for these items. Daniel's prices on both items represented a significant increase over prices paid for these items in recent requirements contracts,^{2/} and over the PPI increase for hand tools. Daniels has not shown that GSA is erroneous in its belief that there is no basis for such an increase. Hence, we conclude that the comparison of Daniels' prices with the nonresponsive bids, with the prices paid for these items in recent procurements, and with the PPI provides an adequate basis for the determination that Daniels' prices were unreasonable.

We also disagree with Daniels' position that the resolicitation has created an impermissible auction simply because its prices were exposed. That argument leads to the illogical conclusion that, contrary to what is permitted by the regulations, unreasonable bid prices could not be rejected since those prices would be exposed and an attempt to get reasonable prices would constitute an impermissible auction. MIL-STD Corp., B-212038, et al., supra. Moreover, although any resolicitation after the rejection of unreasonably priced bids allows nonresponsive bidders another chance to bid with the knowledge of the prior bid prices, the second

^{2/} The protester notes that the tool purchased under the requirements contract alleged by GSA to be the same as item 29 under the solicitation actually has a different probe length. It does not state, however, that the difference would have a significant affect on its cost.

competition also provides the bidder who bid an unreasonable price another opportunity to bid as well, and this time at a reasonable price. Sylvan Service Corp., B-222482, supra.

The protest is denied.


fn Harry R. Van Cleve
General Counsel